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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,444	12/08/2003	Kennith L. Reid		2269

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,444

Applicant(s)

REID, KENNITH L.

Examiner

Robert M. Fetsuga

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/08/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3751

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-7, drawn to a siphon tube, classified in class 4, subclass 353.

II. Claims 8-11, drawn to a method for installing a siphon tube, classified in class 4, subclass 661.

The inventions are distinct, each from the other because:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used in a process not requiring an inverting step.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification which would lead to divergent fields of search, restriction for examination purposes as indicated is proper.

2. During a telephone conversation with Douglas S. Bishop on March 23, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-7. Affirmation of

Art Unit: 3751

this election must be made by applicant in replying to this Office action. Claims 8-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites a siphon tube "for maintaining a trickle flow of fluid". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. Once flow through the tube 10 is started, it would continue until the liquid level in the tank 22 drops below end 42 enabling entry of air to the tube 10 and stopping the siphon action. Attention is directed to the Halff et al. reference (col. 1 lns. 56-63, for example) as evidence of the well known siphon operation.

4. Claims 1 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3751

Claim 1 is unclear as to whether the "tank reservoir" is intended to be part of the claimed combination since structure of the "siphon tube" is defined as being connected thereto (ln. 12), but no positive structural antecedent basis therefor has been defined. Claim 7 is similarly indefinite.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Richards.

Considering claim 1 to be drawn to a siphon tube per se, the Richards reference discloses a siphon tube comprising: a hollowed body including parallel lengths 9,16 and a plurality of coils 11-15, as claimed. The siphon tube is capable of

Art Unit: 3751

"maintaining a trickle flow" in the same sense as with applicant's tube.

7. Claims 4 and 7, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Richards and Behrer.

Re claim 4, although the end 17 of the Richards siphon is not angled, as claimed, attention is directed to the Behrer reference which discloses an analogous siphon c,d which further includes an angled end (Fig. 2). Therefore, in consideration of Behrer, it would have been obvious to one of ordinary skill in the siphon art to associate an angle with the Richards siphon end in order to facilitate fluid flow.

8. Claim 5, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Richards and Giacosa.

Although the Richards siphon is not plastic, as claimed, attention is directed to the Giacosa reference which discloses an analogous siphon which further includes plastic (col. 2 lns. 61-62). Therefore, in consideration of Giacosa, it would have been obvious to one of ordinary skill in the siphon art to associate plastic with the Richards siphon in order to utilize a light, strong material.

9. Claim 6, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Richards and Barton.

Art Unit: 3751

Barton discloses a squeeze bottle 1. Absent any structural cooperation between the claimed siphon and squeeze bottle, the Barton bottle is capable of being used with the Richards siphon as functionally recited in the claim.

10. Claim 1-3, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Finkbiner and Barr.

Considering claim 1 to be drawn to a siphon tube and tank combination, the Finkbiner reference discloses a siphon tube comprising: a hollowed body including parallel lengths 24,25 and an upper end 26; and an overflow tube W. Therefore, Finkbiner teaches all claimed elements except for the upper end having a plurality of coils.

Although the upper end of the Finkbiner siphon does not include a plurality of coils, as claimed, attention is directed to the Barr reference which discloses an analogous siphon which further includes an upper end having a plurality of coils 24,25. Therefore, in consideration of Barr, it would have been obvious to one of ordinary skill in the siphon art to associate a plurality of coils with the Finkbiner upper end in order to preserve the charge in the siphon.

11. Claims 4 and 7, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Finkbiner and Barr as applied to claim 1 above, and further in view of Behrer.

Art Unit: 3751

To associate an angle with the Finkbiner siphon end would have been obvious to one of ordinary skill in the art in consideration of Behrer analogous to the discussion supra.

12. Claim 5, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Finkbiner and Barr as applied to claim 1 above, and further in view of Giacosa.

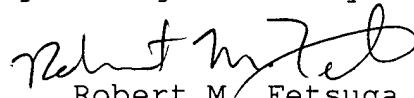
To associate plastic with the Finkbiner siphon would have been obvious to one of ordinary skill in the art in consideration of Giacosa analogous to the discussion supra.

13. Claim 6, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Finkbiner and Barr as applied to claim 1 above, and further in view of Barton.

To associate a squeeze bottle with the Finkbiner siphon would have been obvious to one of ordinary skill in the art in consideration of Barton analogous to the discussion supra.

14. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

15. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.


Robert M. Fetsuga
Primary Examiner
Art Unit 3751